IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1622 OF 2001

The State of Maharashtra ...Petitioner

V/s.

Ganesh Mahadeo Waskar ...Respondent

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Mr. I.S. Thakur, A.P.P. for petitioner/State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE : 19TH AUGUST, 2004

P.C..

1. Heard Mr. Thakur, the learned A.P.P. for the petitioner-State.

2. The learned Chief Judicial Magistrate, Kolhapur discharged accused No.3 Ganesh Waskar for the offence punishable U/sec. 419 and 193 r.w. 34 of I.P.C. Being aggrieved by the said order, the State had filed revision application bearing No. 191/1997 before the learned Additional Sessions Judge, Kolhapur. The learned Sessions Judge dismissed the said revision application by order dated 6.6.2001. It is against the said order dated 6.6.2001, that the present writ petition has been filed.

3. Briefly stated the facts are as under:-

. That one Shripati Bate who is accused No.2 sued Pandurang Bate in Regular Civil Suit No. 233/1994. Bapu Bate (accused No.1) is the brother of Shripati Bate. Accused No.3 who is a practicing advocate was the pleader for Shripati Bate. On 18.9.1995 the defendant and his advocate both were absent. However, the work of recording the evidence commenced in their absence. On that day Bapu Bate (accused No.1) entered the witness box styling himself as Shripati (accused No.2) and gave evidence. Thus, the examination in chief came to be recorded and it was adjourned for cross examination. On 9.10.95 during the course of cross examination of Bapu Bate (accused No.1), he admitted that he was not Shripati Bate but he is Bapu Bate. When this fact was noticed by Presiding Judge, she came to the conclusion that the accused No.1 gave false evidence that his name was Shripati Bate and thereby committed an offence punishable under section 193 of I.P.C. and further committed offence of cheating by personation falling under section 416 of I.P.C. punishable under section 419 of I.P.C. On reaching this conclusion on the very same day the learned 5th Joint Civil Judge, J.D. Kolhapur lodged a complaint to Laxmipuri police station, Kolhapur against Bapu Bate i.e. accused No.1. The offence came to be registered vide C.R. No. 104/95 U/sec. 419 and 193 of I.P.C. After

completion of investigation, the charge sheet came to be filed against Bapu Bate (accused No.1), Shripati Bate who is accused No.2 and against respondent in this petition Shri. Ganesh Waskar i.e. the advocate who was representing Bapu Bate and Shripati Bate in Regular Civil Suit No. 233 of 1994. In the said charge sheet, it was alleged that all three accused in furtherance of their common intention committed the said offence and the case was registered as Regular Criminal Case No. 54/1996.

4. On the date of framing of charge the respondent (original accused No.3) contended that no case was made out against him to proceed with. Secondly there was no complaint against him by the Court before which the offences were said to have been committed. The learned Magistrate after hearing both the sides discharged the respondent i.e. original accused No.3. The reason for Magistrate discharging the respondent is that the sanction or the complaint of the Court was necessary against accused No.3 hence, in the absence of the complaint by the concerned Court, accused No.3 cannot be proceeded against and on that ground, the Court discharged accused No.3.

5. The said order was challenged before the learned Second Ad-hoc Additional Sessions Judge,

Kolhapur. The learned Sessions Judge by order dated 6.7.2001 dismissed the revision application. Hence, this writ petition.

6. It is an admitted fact that in the complaint filed by the Court the respondent (accused No.3.) was not made an accused. So also in the complaint there is no reference of the respondent sharing any common intention with accused No.1 Bapu Bate when this is so the investigating agency erred in roping the respondent as an accused when the Court did not find it necessary to hold him liable for the offence committed by the accused No.1 Bapu Bate. It is contended by the learned A.P.P. that the view taken by the Court below is not proper, as the respondent was the pleader who was appearing for accused No.1 Bapu Bate and thus he was knowing that Bapu Bate was not Shripati Bate and still examined him as Shripati Bate. From this fact, it is clear that he shared the common intention of Bapu Bate and Shripati Bate. The learned A.P.P. has submitted that thus the charge could be maintained against the respondent (accused No.3).

7. Whenever perjury U/sec. 196 of I.P.C. is committed in judicial proceeding, the cognizance of the offence can be taken only on the complaint of the concerned Court. This is crystal clear from the provision of section 195 of Cr.P.C.. However,

the learned A.P.P. sought to make the distinction that the offence punishable U/sec. 419 of I.P.C. is not referred in section 195 of Cr.P.C. and therefore, there is no bar for the investigating agency even in the absence of the complaint by the Court to investigate the offence U/sec. 419 of I.P.C. and to send accused for trial.

8. It is an admitted fact that the complaint has been filed by the learned Judge U/sec. 193 and 419 of I.P.C. In the case of **State of Karnataka Vs. Hemareddy and another reported in AIR 1981 SC 1417 : 1981 Cr.L.J. 1019,** it has been held by the Supreme Court that in cases wherein in the course of the same transaction an offence for which no complaint by a Court is necessary U/sec. 195 (1) (b) of Cr.P.C. and the offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in section 195 (1) (b) of the Cr.P.C. should be upheld. Thus, it is clear that the offence U/sec. 419 of I.P.C. cannot be split up from the offence U/sec. 193 of I.P.C. as it forms part of one transaction and therefore, the complaint of the court U/sec. 195 Cr.P.C. is mandatory and the Magistrate cannot take cognizance of such offence in absence of complaint by the Court.

9. In the case of **Govind Mehta Vs. The State of Bihar reported in AIR 1971 SC 1708** and in the case of **Chandrapal Singh and others Vs. Maharaj Singh and another reported in AIR 1982 SC 1238,** it has been held by the Supreme Court that if the name of the accused is not found in the complaint filed by the Court, the Magistrate cannot proceed against such person or the police cannot go beyond the complaint of the Court.

10. In view of the above legal position, the learned Magistrate has rightly discharged the respondent of the offences charged. So also the learned Sessions Judge has rightly dismissed the revision application. No case is made out for interference. Writ petition is dismissed and disposed of.